IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 3731 of 2004

JAGDISH PRASAD
V/S
STATE & ORS.

Mr. VIJAY CHAHAR, for the appellant / petitioner

Date of Order : 3.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

The only contention raised is that in view of circular dated 8.9.2003 (Annex.10), the learned Addl. Collector has no jurisdiction to hear the revision, and as such, the order Annex.9 dated 22.12.03 is without jurisdiction.

In my view, notwithstanding that, on the face of it, the pattas, which have been set aside vide order dt. 22.12.03 (Annex.9), do not appear to be sustainable, inasmuch as, the Pattas purport to have been issued under the Rajasthan Panchayat Act, 1953, and Rule 271 of the Rajasthan Panchayat Rules, 1961. The pattas are issued in August 1996, while in the year 1994, Rajasthan Panchayati Raj Act had commenced , as such, Pattas could not be issued under the provisions of the Act of 1953.

That apart Pattas (Annex.6), shows that they have been issued pursuant to same auction, wherein the petitioner's bit was said to be highest, while according to Annex.7, letter of the Gram Panchayat, sent to the Panchayat Samiti for confirmation, the land was allotted to the petitioner. According to Annex.1, the petitioner's claimed, to be in old possession of the land, covered by one Patta, while he claimed same

exclusive rights in the manner that land could not be, better used by other person, and his way would be closed, with respect to other land. There is no date mentioned in the application, then a notice is said to have been issued for inviting objection on 7.12.1995, then on 7.1.1996, notice is said to have been issued for advertising the land to be auctioned on 7.2.1996, then thereafter it is said to have been advertised again, to be auctioned on 21.6.1996, while according to the Patta, the land was auctioned on 7.8.96. I was shown the original Pattas. From perusal thereof, it transpires that the auction was held with respect to both the plots on 7.8.96, then one Patta is said to have been issued on 9.8.96, while on other Patta, there is over-writing in the date, and by over-writing, it then shown to have been issued on 7.8.96. The certificate of Panchas, produced as Annex.5, does not bear any date. Pattas purport to be issued under R.271, while a look at Rule 271, as it then existed, shows that according to it, the Patta is to be issued after payment has been made as provided in R. 263, the sale has been confirmed as provided in R.265 and an appeal if any, under R.270 has been disposed of, or if no appeal has been preferred, the time limit prescribed therefor has expired.

From the facts narrated above, on the other hand, it is clear, that Patta has been issued on the date of holding auction itself, or a couple of days thereafter. According to Rule 264, auction is to be held for atleast two consecutive days, while according to auction notice, it was not advertised for auction on two consecutive days. Then according to Rule 265, acceptance of the highest bid is to be accepted by the Panchayat, and the authorities prescribed under sub-rule (3) thereafter, while there is nothing to show that this has been so done.

On the other hand, in para no.2 of the Patta dated 7.8.96, it is

recited that sale was accepted by Panchayat on 21.9.96 and thereafter confirmed by Divisional Panchayat Officer's order dated 15.10.96. It does not stand to reason as to how Patta was issued on 7.8.96 or 9.8.96 on the basis of orders issued in Sep.1996 or Oct.1996.

Leaving apart the reasons given by the learned Addl. Collector, on the face of it, the Pattas appear to be manipulated one, and do not appear to be having any sanctity of law.

All this exercise was required to be undertaken by me, as it is established law that even if the order impugned is illegal, or without jurisdiction, if any interference therein is to result into revival of another illegal order, or illegality, interference in writ jurisdiction is required to be declined. In this regard, I may refer to a Full Bench judgment of this Court in Jagan Singh Vs. S.T.A.T. & Anr. reported in AIR 1980 (Raj.)-1.

In that view of the matter, I am not inclined to interfere with the impugned order in the writ jurisdiction. The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

/Srawat/